

**OPINION  
66-215**

July 1, 1966            (OPINION)

Honorable William L. Guy

Governor

RE:   State - Emergency Commission - Grants to Political Subdivisions

This is in reply to your letter of June 30, 1966, relative to the possibility of establishing a state aid program to help finance reconstruction of county and township roads and bridges and other public works in the counties recently damaged by flood waters. You note that the last Legislature did provide for a grant program from the State Contingency Fund through the National Guard Bureau to counties for snow removal and state it is your opinion that this legislative authorization has expired. You ask the following question:

"I am asking you specifically, is there any mechanism by which the State Emergency Commission can allocate funds from the Contingency Fund to counties and municipalities to help offset the costs of reconstruction of public works?"

The Emergency Commission is a commission established by legislative action and has only such powers and authority as are expressly granted to it by the Legislature or must necessarily be implied therefrom. Chapter 54-16 of the North Dakota Century Code, as amended, contains the statutes governing the Emergency Commission. The chapter applies to "\* \* \* state officer, or board, commissioners, directors, or other officers having the control or management of any public institution of the state, or any state activity or enterprise, or having the responsibility of disbursing or expending any money appropriated by the state, \* \* \*." See section 54-16-03.

Thus section 54-16-04 of the North Dakota Century Code, as amended, provides:

"MAY ORDER TRANSFER OF MONEYS BETWEEN FUNDS - ORDER MAY DRAW FROM STATE TREASURY. Whenever it is made to appear to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds that an emergency exists, the emergency commission shall assume that an emergency exists and may order money transferred from one fund to another fund belonging to or appropriated for the same institution or board or the same state enterprise, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term 'emergency' shall be limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor."

In Backman v. Guy, 126 N.W.2d. 910 (N.D. 1964) the Supreme Court of

North Dakota held that the allocation of money authorized by Chapter 54-16 of the North Dakota Century Code is limited to emergencies arising within established funds and departments for which appropriations have already been made, and the commission may not allocate moneys to create new funds or appropriations. While section 54-16-04 has been amended since that decision, the holding of the court with respect to the fact that Emergency Commission grants may only be made to departments or institutions of the state for which the Legislature makes regular appropriations would appear to us to still prevail.

We would further note that section 54-16-09 of the North Dakota Century Code, as amended, provides in part that the Emergency Commission shall require the "department or institution" for whose benefit a warrant upon the State Contingency Fund is to be issued to file a certain statement. This is, in our estimation, further evidence of the fact the Emergency Commission is authorized to draw upon the Contingency Fund only for those state departments or institutions for which the Legislature regularly makes appropriations and not for political subdivisions of the state.

As you have noted in your letter, the 1965 Legislative Assembly did take action to assist political subdivisions in the removal of snow (although the language used was more comprehensive).

Thus Chapter 362 of the 1965 Session Laws provided that the Emergency Commission was authorized to make grants from the State Contingency Fund, in the case of emergencies caused by natural disasters, to political subdivisions of the state or to expend such funds in their behalf to aid them in meeting their extraordinary emergency expenses in protecting life and property from conditions resulting from natural disasters. However the act terminated by its own terms on June 30, 1965. See section 3 of Chapter 362, 1965 Session Laws. This is again an indication that the Emergency Commission does not possess such powers in the absence of legislation authorizing same.

It is our opinion that there is no mechanism in the present statutes governing expenditure of moneys from the State Contingency Fund by which the State Emergency Commission can allocate funds directly to counties and municipalities to help offset the costs of reconstruction of public works. If such direct assistance is to be granted, it must be authorized by the Legislature.

We would note the provisions of sections 37-01-04, 37-01-04.1 and 37-01-06 of the North Dakota Century Code, as amended, authorizing the governor to order out the National Guard in case of emergency and authorizing the Adjutant General to make application to the Emergency Commission for a grant of funds from the Contingency Fund in an amount equal to the costs of the National Guard in performing such service. It is possible such procedure may be available in this situation.

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